

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

WEST COAST FIBERGLASS SPECIALIST
LLC,

Plaintiff,

v.

Case No: 2:20-cv-879-JLB-MRM

TIMOTHY A. KREBS, CLAY WALTER
KREBS, ZACHARIAH WOODMANCY, and
M/V LYMAN 27' 1995 BEARING HULL ID
LYM27010K95,

Defendants.

ORDER

The Magistrate Judge filed a Report and Recommendation (“R&R”) in this matter on February 18, 2021. (Doc. 51.) The R&R recommends that: (1) Plaintiff West Coast Fiberglass Specialist, LLC’s Verified Complaint be dismissed without prejudice for want of prosecution; (2) Claimants Clay Walter Krebs and Timothy A. Krebs’s counterclaims remain pending; (3) the Court order the release of the M/V Lyman, a 27’ 1995 vessel bearing Hull Identification LYM27010K495 and Florida Registration Number FL4248MT (“the Vessel”), her engines, tackle, equipment, apparel, furnishings, freights, appurtenances, and all fixtures and other necessities into the custody of Claimants Clay Walter Krebs and Timothy A. Krebs pursuant to Supplemental Admiralty Rule E(5)(c); (4) in the alternative, grant in part Claimants Clay Walter Krebs and Timothy A. Krebs’s motion to vacate arrest (Doc. 18) and order the Vessel released under Rule E(4)(f); (5) allow Claimants Clay

Walter Krebs and Timothy A. Krebs to file a motion for an award of reasonable attorney's fees and costs within twenty-one (21) days from the date of this Order; and (6) require Claimants Clay Walter Krebs and Timothy A. Krebs to file any appropriate motion relating to their counterclaims within twenty-one (21) days from the date of this Order. (Doc. 51 at 11–12.)

A district judge may accept, reject, or modify the magistrate judge's R&R. 28 U.S.C. § 636(b)(1)(C). The factual findings in the R&R need not be reviewed de novo in the absence of an objection, but legal conclusions are always reviewed de novo. *Id.*; Cooper-Houston v. Southern Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993).

After an independent review of the record—and noting that no objections have been filed—the Court agrees with the well-reasoned R&R.

Accordingly, it is **ORDERED** that:

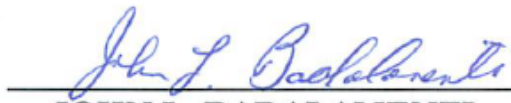
1. The Report and Recommendation (Doc. 51) is **ADOPTED**.
2. Plaintiff West Coast Fiberglass Specialist, LLC's Verified Complaint (Doc. 1) is **DISMISSED WITHOUT PREJUDICE** for want of prosecution. Clay Walter Krebs and Timothy A. Krebs's counterclaims remain pending before this Court. (See Doc. 27 at 12–28.)
3. The U.S. Marshal and Substitute Custodian, J&R Marine Services, Inc. are **DIRECTED** to release the Vessel into the custody of Clay Walter Krebs and Timothy A. Krebs.

4. Clay Walter Krebs and Timothy A. Krebs's motions to vacate arrest (Docs. 18, 58, 59) are **DENIED WITHOUT PREJUDICE as moot** in light of this Order.

5. Should Defendants desire an award of reasonable attorney's fees and costs pursuant to M.D. Fla. Admiralty and Maritime Practice Manual § 3(f), such as the costs associated with obtaining the Vessel's release, they must file that motion **on or before April 30, 2021.**

6. **On or before April 30, 2021,** Clay Walter Krebs and Timothy A. Krebs must file an appropriate notice of dismissal, motion for default, or other appropriate motion relating to their counterclaims to either maintain their counterclaims or dismiss them.

ORDERED at Fort Myers, Florida, on April 9, 2021.



JOHN L. BADALAMENTI
UNITED STATES DISTRICT JUDGE